
Chapter 5 Core Rights of Crime Victims in South Carolina

Abstract

Core crime victims' rights are those rights that are fundamental to ensuring the meaningful participation of crime victims in the criminal justice system. Core rights for South Carolina state crime victims are primarily found in the South Carolina Constitution and the enabling legislation found in the South Carolina Code of Laws. Having the important duty and responsibility to protect and advocate for the crime victim, it is imperative that the victim advocate have a thorough understanding and solid working knowledge of the state law of victims' rights to ensure that the crime victim receives all the rights (s)he is entitled to pursuant to the law of South Carolina and to advocate for the victim when these rights are abridged or violated.

Furthermore, it is vitally important for the victim advocate to understand **that the rights guaranteed to crime victims under the South Carolina Constitution and its enabling statutes are mandatory.**

These rights are not optional or discretionary.

All South Carolina crime victims are entitled to these rights and protections by law!

Learning Objectives

Upon completion of this chapter, students will understand the following concepts:

- The origin of crime victims' rights law;
- The specific rights to which South Carolina crime victims are entitled under the South Carolina Constitution and South Carolina Code of Law;
- When these rights attach;
- Who has the duty to ensure the exercise and protection of these rights and at which stage;
- Additional rights of South Carolina crime victims;
- Responsibilities of crime victims in receiving their rights;
- Existing limitations on the enforcement of crime victims' rights.

Overview

The earliest criminal prosecutions were largely private proceedings through which a victim sought retribution against and restitution from the perpetrator of the crime. As countries became more organized and structured, however, governments began to assume greater responsibility for the initiation and conduct of criminal prosecutions, a change which substantially reduced and often virtually eliminated the crime victim's previous role in the criminal justice process. This evolutionary trend from private to public criminal prosecutions occurred in the United States as this country moved from a collection of colonies to a federated nation of states.

The maintenance of a public criminal prosecution model and its accompanying marginalization of the crime victim continued until the 1970s when a victim's movement emerged, which emphasized making the crime victim an integral part of the criminal justice process once again. Throughout the 1970's, the efforts of this grass roots movement began to be translated into state and local legislation focusing on the crime victim and his/her needs. Much of the initial legislation attempted to restore victim entitlement or access to compensation or restitution for losses suffered as a result of the crime, but other means of involving the victim in the criminal justice process began to be identified as well.

The efforts to reestablish a greater role for crime victims in the criminal justice process received a major boost when President Ronald Reagan established the President's task Force on Victims of Crime in 1982. In its final report, the Task Force proposed greater victim access to and participation in criminal proceedings to restore balance to the criminal justice system by better integration of the concerns of crime victims into the system.

In the years since the issuance of the Task Force Final Report, there has been a literal explosion of federal and state action to increase crime victim access to and participation in the criminal justice process. It has been largely centered on establishing and interpreting crime victims' rights to notice and presence and hearing at critical stages in the criminal justice proceedings. The federal government and all 50 states have enacted legislation that provides at least some victim rights of participation in the process. Twenty-nine states, including South Carolina, have ratified "victim rights" constitutional amendments which generally include victim rights of participation to some degree. These legislative and constitutional provisions and the court decisions interpreting them vary widely. [FN1]

Yet, for crime victims, to exercise their rights, they must first be made aware that such rights exist. The victim advocate plays a vital role in making the crime victim aware of the rights to which they are entitled pursuant to South Carolina law. In

many instances, it is the victim advocate who is the first line of defense in terms of the exercise and protection of these rights. Therefore, it is imperative that all victim advocates have a strong working knowledge of South Carolina crime victims' rights law.

SOUTH CAROLINA'S CORE VICTIM RIGHTS

South Carolina's core victim rights are found in Article I, Section 24 of the South Carolina Constitution (the "Victims' Bill of Rights"), and the Victim and Witness Service Act (the "Act"), S.C. Code Ann. Sections 16-3-1505 to 1550. The intent of the Act is, in part, to implement the Victims' Bill of Rights. See S.C. Code Ann. Section 16-3-1505.

Please Note: The distinction between a constitutional right and a statutory right is extremely important! Constitutional rights take priority over statutes and procedural rules. This distinction becomes critical, for example, when the court is balancing participants' rights.

Under the Victims' Bill of Rights and the Act, the government entity responsible for providing rights varies depending upon the procedural stage of the case. Regardless of the stage, the Act specifically provides that the rights and services extended to crime victims are to be "honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorously than the protections afforded criminal defendants." S.C. Code Ann. Section 16-3-1505. See also S.C. Code Ann. Section 16-3-1535 (F) (stating "[t]he summary court judge must recognize and protect the rights of victims and witnesses as diligently as those of the defendant."); S.C. Code Ann. Section 16-3-1550 (C) (setting forth the same requirements for circuit and family court).

The Victims' Bill of Rights contains a broad definition of victim: a victim is a "person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him." S.C. Const. art. I, Section 24 (C) (2). "Victim" also includes "the person's, spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.." Id. The definition of "victim" in the Act is slightly narrower. See S.C. Code Ann. Section 16-3-1510 (1) (excluding persons who are investigated for, charged with, or convicted of the offense in question for the definition of "victim"). The Victims' Bill of Rights appears to apply to all crimes. In contrast, the Act excludes certain property crimes. See S.C. Code Ann. Section 16-3-1510 (3) (excluding property offenses which do not exceed \$1,000.00 in damages).

Please Note: The definition of "victim" in the Act impermissibly narrows the reach of the Victims' Bill of Rights by excluding certain classes of victims and excluding certain property crimes. A statute, even an enabling

statute, cannot limit constitutional rights. See Trustees of Wofford College v. Burnett, 39 S.E.2d 155, 159 (S.C. 1946).

A victim is only entitled to the rights under the Victims' Bill of Rights and the Act during pendency of the criminal proceeding. See Ex Parte Littlefield, 540 S.E.2d 81, 85 (S.C. 2000). Once a criminal case has been resolved, such as when charges are dropped against the defendant or post-conviction actions are completed, the victim loses his or her victim status under the Victims' Bill of Rights.

I. CORE RIGHTS OF SOUTH CAROLINA CRIME VICTIMS PURSUANT TO THE VICTIMS' BILL OF RIGHTS (S.C. Constitution, Art I, Section 24)

1: The Right to Be Treated with Fairness, Respect and Dignity

The South Carolina Victims' Bill of Rights provides a broad right to be "treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process . . . provided by statute." S.C. Const. Art I, Section 24 (A) (1). See also S.C. Code Ann. Section 16-3-1505 (stating that intent of the Act is, in part, "to ensure that all victims of . . . crime are treated with dignity, respect, courtesy and sensitivity.")

Please Note! While the broad right to be treated with" fairness, respect and dignity" may sound like warm, fuzzy, touchy feely rights that don't mean anything in reality, courts in other states with general constitutional rights to fairness, dignity and respect, have found these to be ENFORCEABLE RIGHTS, not merely general statements of principle or preamble.

2: The Right to Information

The right to information refers to a crime victim's right to be generally informed about criminal proceedings and about available resources. This right is distinct from the right to notice, which is the right to be notified of specific events in the criminal justice proceeding.

The Victims' Bill of Rights provides that a victim has a right to be informed about other constitutional rights. See S.C. Const., art I, Section 24 (A) (1). A law enforcement officer is responsible for informing victims of their constitutional rights. See S.C. Code Ann Section 16-3-1520 (A) (1).

The Act provides additional rights to information. For instance, a law enforcement officer must provide a victim with a copy of the incident report and information about the victim's responsibilities, local victim assistance providers, compensation, and the rights of a victim who is harassed or threatened. See S.C. Code Ann Section 16-3-1520 (A) (2)-(5). Further, upon request, law enforcement

must make a reasonable attempt to keep a victim informed about the status of the case until the completion of disposition. See S.C. Code Ann Section 16-3-1520 (D).

The summary court must provide each victim with information about its procedures and practices. See S.C. Code Ann., Section 16-3-1535 (C).

3: The Right to Notice

As noted above, the right to notice is distinct from the right to information. The right to notice provides that a crime victim has a right to be notified in advance of specific events that occur during criminal justice process. The Victims' Bill of Rights provides that a victim has a right to be notified of changes in custodial status or escape of the accused, about certain criminal justice proceedings, and about the right to be heard at various criminal justice proceedings. See S.C. Const, art I, Section 24 (A) (2)-(4), (10). For example, a victim has a constitutional right to be reasonably notified "when the accused or convicted person is arrested, released from custody, or has escaped." See S.C. Const. art I, Section 24 (A) (2). The department or agency having custody of the defendant has the responsibility, upon request of the victim, of reasonably attempting to notify a victim of a defendant's release, escape or transfer to a less secure facility. See S.C. Code ann. Section 16-3-1530 (1)-(4). See also S.C. Code ann. Section 16-3-1525 (B) (providing that law enforcement personnel must make a reasonable attempt to notify a victim prior to release of a juvenile offender).

Pursuant to the Victims' Bill of Rights and the corresponding provisions in the Act, the victim is only entitled to be "reasonably" informed of changes in an offender's custodial status, escape, hearings affecting bail or bond, or that the victim has the right to be heard at certain criminal proceedings. See S.C. Const. art I, Section 24(A) (2),(3), (10); S.C. Code Ann., Section 16-3-1525 (B), (H)(1),(I),(J) (1); S.C. Code Ann., Section 16-3-1530 (1)-(4). In contrast, the victim's right to be notified of criminal proceedings and post-conviction proceedings are not limited by a "reasonableness" standard and, as such, appear to be broader. See S.C. Const. art I, Section 24(A) (3), (10); S.C. Code Ann., Section 16-3-1535 (D).

Please Note! South Carolina courts have not yet interpreted what would constitute "reasonable" notification. When faced with this issue, it should be argued that this term should not be interpreted to allow the victim's rights to be nullified.

A victim also has a constitutional right to be reasonably notified of hearings affecting bail or bond. See S.C. Const. art I, Section 24 (A) (4). The Act places the responsibility for notice regarding arrest or detention, bond, or other pretrial release hearings or procedures on law enforcement personnel. See S.C. Code Ann Section 16-3-1525 (A). See also S.C. Code Ann. Section 16-3-1525 (H) (1),

(I) (1), (J) (1) (providing that arresting agency must reasonably attempt to notify a victim in advance of bond or detention hearing).

Further, a victim has a constitutional right to be notified of any criminal proceedings at which the defendant has the right to be present and which are dispositive of the charges, and to be notified about any post-conviction proceedings. See S.C. Const. art. I, Section 24 (A) (3), (10). It is the summary court judge's responsibility to provide a victim with notice of each hearing, trial, or other proceeding. See S.C. Code Ann Section 16-3-1535 (D). See also S.C. Code Ann Section 16-3-1525 (K) (providing that summary court judge must reasonably notify a victim in advance of a preliminary hearing).

Upon retaining jurisdiction of a case, the summary court must also reasonably attempt to notify a victim of the following rights:

1. The right to be present at all hearings
2. The right to participate at all hearings
3. The right to be represented by counsel
4. The right to pursue civil remedies
5. The right to submit a written or oral victim impact statement for consideration at disposition proceedings.

See S.C. Code Ann. Section 16-3-1535 (A) (1)-(4). Finally, a victim has a constitutional right to be notified of the disposition of the case. See S.C. Const. art I, Section 24 (A) (7).

4: The Right to Be Present

The Victims' Bill of Rights provides a general right to be present at "any criminal proceedings which are dispositive of the charges where the defendant has the right to be present. S.C. Const. art I, Section 24 (A) (3). The Act makes it clear that this right is not to be abridged even during trial. See S.C. Code Ann. Section 16-3-1550 (B) (stating that "[a] person must not be sequestered from a proceeding adjudicating an offense of which he was a victim").

Following disposition, a victim has a constitutional right to "be present at any post-conviction hearing involving a post-conviction release decision." S.C. Const. art I, Section 24 (A) (10).

The Act provides that a victim also has a right to attend a bond or detention hearing. See S.C. Code Ann., Section 16-3-1525 (H) (1), (I) (1), (J) (1). Before proceeding with a bond or detention hearing, the court must inquire whether a reasonable attempt was made to notify the victim of the hearing and, if notice was not timely given, must delay the hearing for a reasonable time to allow for notice. See S.C. Code Ann., Section 16-3-1525 (H) (2), (I) (2), (J) (2).

A victim who wishes to exercise his or her right to be present for any plea, trial, or sentencing must notify the solicitor or court. See S.C. Code Ann. Section 16-3-1515 (C). This notification may be done in a written victim impact statement. *Id.*

5: The Right to Confer

After a crime has been charged, a victim has a constitutional right to confer with the prosecutor prior to trial or before any other disposition. See S.C. Const. art I, Section 24 (A) (7). This right does not give the victim the right to control the solicitor's decisions or reject a proposed plea offer; the solicitor retains unfettered discretion to determine whether to prosecute the case, plea bargain it down to a lesser offense, or decide that prosecution is not warranted. See *State v. Becka*, 511 S.e.2d 396, 400 (S.C. 1999).

6: The Right to Be Heard

A victim has constitutional and statutory rights to be heard throughout the criminal justice process. First, a victim has a constitutional right to "be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing." S.C. Const. art I, Section 24 (A) (5). In exercising his or her right to be heard at any hearing affecting bond or bail, a victim may make an oral statement or submit a written statement. See S.C. Const. art I, Section 24 (A) (4). A victim also has statutory rights to make recommendations to the judge at bond or detention hearing, See S.C. Code Ann. Section 16-3-1525 (H)(1), (I)(1), (J)(1), and to make an oral or written victim impact statement. See S.C. Code Ann. Section 16-3-1535 (A) (4).

7: The Right to a Reasonable and Prompt Disposition

The Victims' Bill of Rights provides that a victim has a right to "a reasonable disposition and prompt and final conclusion of the case." S.C. Const. art I, Section 24(A) (11).

Please Note! Pursuant to the constitutional and statutory right to a "prompt and final conclusion of the case," victims should be able to participate in proceedings regarding continuances and court scheduling.

Please Note! The victim's constitutional right to "a reasonable disposition" is unique to South Carolina. While this right has not yet been interpreted by South Carolina courts, it may provide a strong constitutional "hook" to support a number of arguments regarding victims' rights where the court's decision at issue is patently unfair or not authorized by law.

8: The Right to Protection/Including Information About Release

The Victims' Bill of Rights and the Act provide protection rights that can be generally categorized into two groups: 1) physical protection from the defendant, and 2) information about the defendant to allow a victim to protect him or herself.

With regard to the first category, physical protection, a victim has a constitutional right to "be reasonably protected from the accused or person acting on his behalf throughout the criminal process." S.C. Const. art I, Section 24(A) (6). The Act provides that law enforcement personnel are responsible for providing "any measures necessary to protect the victim." See S.C. Code Ann. Section 16-3-1525 (G), and a victim is entitled to have a court impose release conditions which protect him or her from harassment or intimidation by the defendant. See S.C. Code Ann., Section 16-3-1525 (H) (3), (I) (3), (J) (3). To ensure a victim's physical protection, law enforcement personnel may be responsible for providing transportation to and from the courthouse. See S.C. Code Ann. Section 16-3-1525 (G).

Please Note! : These general rules for protection may be implicated at a number of stages in the criminal justice process and should not be dismissed as vague or overbroad.

With regard to the second category, information about the defendant, a victim has a constitutional right to be reasonably notified of an offender's arrest, escape, or release from jail. See S.C. Const. art I, Section 24(A) (2). A victim also has the right to be reasonably notified of hearings affecting bail or bond. See S.C. Const. art I, Section 24 (A) (4), and has the right to be heard at those hearings. See S.C. Const. art I, Section 24 (A) (4), (5),

9: The Right to Restitution

A victim has a constitutional right to "receive prompt and full restitution" from both juvenile and adult offenders who caused the victim's loss or injury. See S.C. Const. art I. Section 24 (A) (9).

A victim wanting restitution must provide the solicitor or court with an itemized list of losses incurred as a result of the offense and an itemization of any recovery for those losses. See S.C. Code Ann, Section 16-3-1515(B). This list must be provided within the time limits established by the solicitor or the court, and may be included in a written victim impact statement. See Id.

10: The Right to Compensation

There is no right to compensation in the South Carolina Constitution. The Act contains provisions that direct governmental actors to inform and assist a victim with applying for compensation. See S.C. Code Ann. Section 16-3-1520 (A) (4), (B). Specifically, law enforcement personnel must provide a victim with information about compensation eligibility and an application for benefits. See

S.C. Code Ann., Section 16-3-1520 (A) (4). Law enforcement personnel must also assist each eligible victim with an application for compensation and other available financial, social service, and counseling assistance. See S.C. Code ann. Section 16-3-1520(B).

II. OTHER VICTIM RIGHTS

In addition to these core rights, the Act provides a victim with the following additional rights.

- ***Intervention services with creditors, employer, and others.*** Upon request, law enforcement advocates can intervene with a victim's creditors, employer, landlord, school, or other parties as appropriate. See S.C. Code Ann. Section 16-3-1520 (C). An employer is prohibited from retaliating against, suspending, or reducing the wages and benefits of a victim who responds to a subpoena. See S.C. Code ann. Section 16-3-1550 (A).
- ***Diligent protection of rights.*** The court must protect a victim's rights as diligently as those of the defendant. See S.C. Code Ann. Section 16-3-1550(D).
- ***Court's verification of reasonable notice by solicitor.*** Before proceeding with plea, trial, sentencing, or other dispositive hearing, the court must ask the solicitor whether "a reasonable attempt was made to notify the victim sufficiently in advance to attend." See S.C. Code Ann section 16-3-1550 (D). If not, "the hearing must be delayed for a reasonable time to allow for notice." *Id.*
- ***Right to be represented by counsel and pursue civil remedies.*** The court must inform the victim of the right to be represented by counsel and the right to pursue civil remedies. See S.C. Code Ann., Section 16-3-1535 (A) (1)-(4).
- ***Expeditious return of property.*** A victim has the right to expeditious return of personal property. See S.C. Code ann. Section 16-3-1535 (E).
- ***Interpreter.*** A victim who does not sufficiently understand or speak the English language has the right to a "qualified interpreter to interpret the proceedings." S.C. Code Ann., Section 17-1-50 (B) (1).
- ***Separate waiting area.*** For proceedings in circuit or family court, law enforcement personnel and the solicitor must make reasonable efforts to provide the victim, with a separate waiting area from those used by the defendant and defense witnesses. See S.C. Code ann. Section 16-3-1550(C).
- ***Alternative means of testifying.*** A victim who is very young, elderly, handicapped, or who has special needs, has the right to use "closed or taped sessions where appropriate." S.C. Code Ann Section 16-3-1550 (E).

The solicitor must notify the court when special consideration is necessary. See *Id.*

III. VICTIM'S RESPONSIBILITIES

A victim who wishes to receive the rights and services provided by the Victims' Bill of Rights and the Act must provide his or her name and contact information to law enforcement, the solicitor, the court, the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the corresponding agencies for juvenile offenders. See S.C. Code Ann. Section 16-3-1515 (A).

IV. HOW TO REQUEST RIGHTS

While a victim is automatically entitled to most constitutional rights, the Act sets forth certain rights that are only available upon request. See e.g., S.C. Code Ann. Section 16-3-1520(C) (law enforcement intervention with employer, school, and landlord); S.C. Code Ann. Section 16-3-1520(D) (information from law enforcement about status of the case through the completion of disposition); S.C. Code Ann. Section 16-3-1530(1)(4) (notification from the department or agency having custody of the offender of release, pre-conviction escape, transfer to a less secure facility, and post-conviction escape).

Please Note! A victim, the victim advocate or victim's attorney must be vigilant throughout the criminal proceedings and ensure that all contact information, including the victim's information, be updated and re-served on all appropriate agencies as the case proceeds.

V. Limitations on Enforcement

The Victims' Bill of Rights provides that a victim does not have a civil cause of action against "any public employee, public agency, the State or any agency responsible for the enforcement of rights and provisions contained in this Section" S.C. Const. art I, Section 24 (B). [FN2]

Core Victims' Rights Self-Examination

- 1. List the 10 core rights of South Carolina crime victims.**
- 2. Where are the rights of South Carolina crime victims found in the law?**
- 3. What is the difference between a constitutional and a statutory right?**
- 4. How does a crime victim receive the rights guaranteed under the S.C. Constitution and S.C. Code of Laws?**

[FN 1] Peggy M. Tobolowsky, Victim Participation In the Criminal Justice Process: Fifteen years After the President's Task Force on Victims of Crime,²⁵ New England Journal on Criminal and Civil Confinement, 21 22-23 (Winter, 1999).

[FN2] National Crime Victim law Institute, Working Draft South Carolina Crime Victims Rights Reference Manual, 2005.